OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN
delivered on 12 February 1985

My Lords,

In this case the Court has been asked to give a preliminary ruling on whether the production of certain table wine by coupage and its sale under particular designations is compatible with the Community wine regulations.

The defendants were charged by the French State prosecutor and the Service de la répression des fraudes with having deceived or attempted to deceive a purchaser between January and August 1981 by presenting as rosé table wines wines obtained by the coupage of Italian rosé wine and red table wines from various Member States of the Community. According to the prosecuting authorities, rosé wines could only be produced from grapes with coloured skins and white or coloured pulp which had undergone a process known as 'vinification en blanc' ('fermentation off skins') resulting in wines with a light colour. The Court has been informed that this definition is not laid down by French legislation, but has been accepted in the case law of the French courts. Apparently in line with that case law, the prosecuting authorities claim that the sale of a product as rosé wine constitutes a deceptive trading practice, when it has been produced by any other method. This view is shared by the Fédération nationale des producteurs des vins de table et vins de pays, which has been joined as 'partie civile' and is seeking considerable sums in damages against the defendants in that capacity.

The case came before the Tribunal correctionnel of Montpellier which dismissed the charges. An appeal was then lodged with the Cour d'Appel of Montpellier which referred the following question to the Court under Article 177:

'Do the Community rules, as they stand at present, authorize the coupage within the Community of red wines and rosé wines originating in an area of the said Community and the marketing thereof in any such area under the designation "vin rosé DPCE" or "vin rouge DPCE"?'

The Fédération nationale, the defendants in the main case, the Commission and the Italian Government have all put in written observations and appeared at the hearing. The Commission and the Italian Government both supported the defendants, although for somewhat differing reasons.

The reference raises two separate issues — the restriction on the production and sale of wine produced by coupage on the one hand and the designation and labelling on the other.

The prohibition on production and sale

It is common ground that there is no Community definition of rosé wine. Nor apparently is there any precise definition in France. In view of the range of rosé wines, attempts to lay down such a definition have proved unsuccessful. Community legislation contains no definition of white wine or red wine either.

For the purpose of Community Regulations, 'coupage' is defined by Article 2 of Commission Regulation No 3282/73 (Official Journal 1973, L 337, p. 20). In essence, 'coupage' means the mixing together of wines or musts of different States, wine-growing areas, geographical origins, wine varieties or harvest years; or the mixing together of wines or musts of 'different categories'. It follows from the final subparagraph of Article 2 (2) which provides that for the purposes of the paragraph, rosé wine is to be regarded as red wine, that the mixing of a rosé wine with a red wine is not in itself the mixing together of wines of 'different categories', and is, therefore, not 'coupage'. However, the present case concerns the mixing of Italian wines with red wines from different Member States so that coupage within the Community definition is involved, even though the defendants contend that 'assemblage' would be a more accurate term.

Council Regulation No 338/79 lays down special provisions relating to quality wines produced in specified regions (Official Journal 1979, L 54, p. 48) and the Commission contends that Article 6 (1)(a) of that Regulation prohibits the coupage of such quality wines.

The current proceedings concern, however, not quality wines but table wines. Article 43 of Council Regulation No 337, p. 79 on the common organization of the market in wine (Official Journal 1979, L 54, p. 1) deals with the coupage of table wine. So far as is relevant, Article 43 (1) provides as follows:

'Where coupage takes place, and subject to the provisions of the following paragraphs, only products resulting from coupage between table wines . . . shall be considered as table wines . . . '

Paragraph 3 prohibits in general the coupage of a white table wine with a red table wine, though 'in certain cases to be determined', white and red wines may be mixed, provided that the resultant product has the characteristics of a red table wine. It appears that no such cases have yet been determined. Paragraph 4 prohibits the coupage of a Community wine with a wine originating in a third country. It also prohibits the coupage in the geographical territory of the Community between wines originating in third countries, except where this operation is carried out in free zones and the ensuing blend is intended for consignment to a third country or if a derogation is granted by the Council of the Communities.

There is dispute as to whether wines called 'rosé' can only lawfully be made in the way the Federation claims. The defendants contend that there are other ways of making rosé wine, e.g. by coupage, which are acceptable, and the product is in no way misleading to the consumer, particularly if adequate labelling is adopted. There is a wide range of rosé wines, which belong to the same family as red wines, as is shown by Article 2 (2) of Regulation No 3282/73. In the latter respect, the Commission in addition points to the fact that rosé wines are assimilated to red wines under Article 6 (1) of Commission Regulation No 2373/83 (Official Journal 1983, L 232, p. 5) and in Article 1.II of Commission Regu-

lation No 3676/83 (Official Journal 1983, L 366, p. 47).

The Federation argues that although red and white or red and rosé wines may be mixed under certain conditions, consistent with Community Regulations, they may not be sold as rosé wines. Since there is no provision in Community legislation expressly dealing with the point it is open to Member States to make their own rules and accordingly the French rules, that only wine made in a certain way, following traditional practices, may be sold as rosé wine are lawful and can be enforced.

It is clear that Article 43 of Regulation No 337/79 does not contain any express provision prohibiting the coupage of a red table wine with a rosé table wine, both wines originating in the Community. Nor equally does it say expressly that under Community rules such coupage is permitted.

On the other hand, so far as table wines are concerned Article 43 plainly contemplates that coupage of table wines will occur, and, as I read it, it lays down the conditions in which coupage is acceptable for such wines. There are thus limits on the use of wines suitable for yielding table wines and on the mixture of red and white wine. Similarly the labelling provisions of Article 2 (1)(d) of Council Regulation No 355/75 (Official Journal 1979, L 54, p. 99) lay down general rules for the description and presentation of wines and grape musts. A table wine resulting from a coupage of products originating in more than one Member State is to be labelled 'wine from different countries of the European Community'. Council Regulation No 340/79 (Official Journal 1979, L 54, p. 60) defines the types of red table wines and white table wines for the purposes of fixing guide prices but says nothing about rosé table wines.

Case 83/78 *Pigs Marketing Board* v *Redmond* [1978] ECR 2347 and Case 56/80 *Weigand* v *Schutzverband Deutscher Wein* [1981] ECR 583 show that once a common organization of the market has been established by the Community, Member States must not take or enforce measures which conflict with the rules of the market.

The Commission contends that on the present issue the Community has legislated comprehensively so that there is no room for national measures in so far as the coupage of wines from various Member States in order to make rosé wines is concerned.

Cases such as Cases 237/82 *Jongeneel Kaas* v *Netherlands* (judgment of 7 February 1984) and 16/83 *Prantl* (judgment of 13 March 1984) show that, in determining whether Community legislation forming part of a common market organization precludes the adoption or continued existence of national measures, a cautious approach must be adopted. The mere existence of some provisions covering a particular agricultural product does not necessarily preclude any national measures covering any aspect of the production or sale of that product. In each case one must have regard to the nature and purpose of the Community legislation in question.

In Case 204/80 *Procureur de la République* v *Vedel* [1982] ECR 465 and *Prantl* the Community wine regulations were held not to be exhaustive on the point in issue. In *Vedel* it was held that wine-based aperitifs

were not governed by Community regulations at all. In *Prantl* the Court ruled that Community legislation did not preclude the existence of a national measure reserving the use of bottles of a particular shape known as 'Bocksbeutel' to wines of a certain origin. That ruling turned in particular on Article 40 (2) of Regulation No 355/79 which provides that 'use of the containers may be subject to conditions to be laid down for the purpose of ensuring in particular that . . . (b) quality and origin of the product may be distinguished'. One Regulation had in fact been adopted governing the use of the bottle known as the 'flûte d'Alsace'. It was held that the enactment of implementing legislation concerning one single type of bottle did not preclude national measures relating to other types of bottle. In reaching this result the Court stressed that the shape of bottles was only of peripheral importance to the common market organization.

As regards coupage the situation is in my opinion different. As already mentioned, the Community wine regulations contain a number of provisions concerning the coupage of table wines, which are not, unlike the *Prantl* position, dependent on the implementation of further Community legislation. Moreover the provisions adopted are by no means of secondary importance in the common market organization. On the contrary, they are among its central provisions, since they are devoted to the conditions of production and treatment of wine. Article 43 comes under Title IV of Regulation No 337/79 ('Rules concerning oenological processes and conditions for release to the market'), which is of central importance to that Regulation.

In my opinion Article 43 (1) must be taken to mean that, subject to the following paragraphs of the same Article, coupage of table wines from wines coming from various Member States is permitted and may not be prohibited by the Member States. Nor may the sale of the resulting product. The Community provisions in effect cover the whole field.

The question referred asks whether Community 'rules' authorize the production and sale of the wine in question. This should not be read narrowly to mean 'regulations'. It is wide enough to include the question whether such a practice is capable of violating Articles 30 and 36 of the EEC Treaty. This question is in any event relevant if the Court takes a different view of the first issue discussed.

In my view, a ban on the production or sale of a wine resulting from the coupage of an imported wine from another Member State with one or more other wines constitutes an actual or potential, direct or indirect restriction on imports and is therefore to be regarded as a measure of equivalent effect to a quantitative restriction within the meaning of Article 30. In Case 119/78 *Peureux* v *Directeur des services fiscaux* [1979] ECR 975, it was held that a prohibition on distilling imported products was contrary to Article 30. The only material difference between the two measures is that, unlike the provision in *Peureux*, that in issue here applies in the same way to the coupage of imported wines and to the coupage of French wines. However, as is established by Case 120/78 *Cassis de Dijon* [1979] ECR 649 and a long

line of subsequent cases, that fact does not bring this measure outside Article 30.

Moreover, the ban in question is not justified on any grounds accepted in Community law. The only arguable justification would be consumer protection and the prevention of unfair competition. Yet a ban on production or sale of the product in question would not be justified on these grounds, since adequate labelling will suffice to protect the consumer. In view of Article 2 (1)(d) of Regulation No 355/79 a label bearing the words 'wine from different countries of the European Community' must be taken as adequate to tell the customer that the wines are a mixture.

It follows that, if the Community regulations are not exhaustive, it is in any event contrary to Article 30 for a Member State to prohibit the coupage of an imported wine with another wine in circumstances not prohibited by the Community regulations themselves, or to prohibit the sale of the resulting product.

Designation and labelling

If it is right that the sale of a table wine of the kind in question cannot be prohibited in national law, then the question arises as to whether the designations 'vin rosé DPCE' or 'vin rouge DPCE' may be used.

As already mentioned, Article 43 (1) of Regulation No 337/79 provides that the product resulting from the coupage of two table wines is itself a table wine. Accordingly, the wines sold by the defendants in the main case were table wines. By virtue of Article 2 (1)(a) of Regulation No 355/79 the label was therefore required to bear the words 'table wine'.

In addition, Article 2 (1)(d) of the latter Regulation stipulates that table wine resulting from coupage of products originating in more than one Member State must bear the words 'wine from different countries of the European Community' ('vin de différents pays de la Communauté européenne') on the label. (Article 2 (1)(d) was substantially amended by Council Regulation No 1016/81 (Official Journal 1981, L 103, p. 7). That Regulation came into force in April 1981, during the period in which the material facts arose. Nevertheless, on the specific point at issue here that Regulation merely re-enacts the earlier Regulation.)

The question posed by the court at Montpellier refers to the designations 'vin rosé DPCE' and 'vin rouge DPCE'. To my mind it is incompatible with Article 2 (1)(d) to substitute the acronym DPCE for the words 'de différents pays de la Communauté européenne' ('from different countries of the European Community'). The Court has not been informed as to whether French consumers would understand the letters 'DPCE'. But that is not the point. The fact is that Article 2 (1)(d) sets out exhaustively the form of words to be used and does not permit the use of such an acronym. It is to be contrasted with Article 12 (2)(j) of the same Regulation and Article 16 (5) of Regulation No 338/79 which specifically provide that the words 'quality wine psr' ('v.q.p.r.d.' in French) may appear on the label in place of the expression 'quality wine produced in a specific region' ('vin de qualité produit dans une région déterminée').

The requirements of the various subparagraphs of Article 2 (1) are cumulative. Thus a label bearing the words 'wine from different countries of the European Community' must also bear the words 'table wine': compliance with subparagraph (d) does not make it unnecessary to comply with subparagraph (a). This is indicated by other requirements in Article 2 (1), such as that in (b) to the effect that the nominal value of the wine must be set out on the label together with a small letter 'e'. Clearly, the consumer will not know from the information required by Article 2 (1)(b) that the product is a table wine. Consequently the words 'table wine' must also appear on the label.

The designations 'vin rosé DPCE' and 'vin rouge DPCE' are not compatible with Regulation No 355/79. Instead, the label was required to bear the words 'vin de table de différent pays de la Communauté européenne' ('table wine from different countries of the European Community'). No doubt the same information could be presented in a slightly different form such as 'vin de table — vin de différents pays de la Communauté européenne', provided that the actual words required by the Regulation were used in a form that was not misleading.

It is provided by Article 2 (2)(a) of Regulation No 355/79 that the description on the label may be supplemented by a statement as to whether the wine is red, rosé or white. This is optional. Nevertheless it need hardly be said that, where a trader chooses to exercise this option, the statement given must be accurate. By virtue of Article 43 (1) of the same Regulation, the description and presentation of wine must not be liable to cause confusion as to its nature, origin or composition. It would be incompatible with that provision to give an incorrect statement as to the colour of the wine on the label.

In the present case on the information available the Court is not in a position to deliver a ruling on whether wine such as that sold by the defendants in the main case should properly be described as rosé or as red wine. As already mentioned, there is no definition of either rosé wine or red wine as such in the Community regulations. The Court has been told that these matters are the source of very great difficulty for experts in the field.

If the wine is sold as a rosé wine it must be within the range of colour accepted as being rosé wine rather than red or white wines. Compliance with Article 2 (1)(d), although it indicates that there has been a mixing of wines, will not necessarily indicate that red and rosé, as opposed to two or more rosé wines, have been mixed. Article 2 (2)(h), however, permits rules to be adopted by the Community, or if none is adopted, to be made by the Member States, requiring details to be given of 'the type of product' and 'the particular colour of the table wine'. This provision, in my view, makes possible rules requiring it to be made clear that a rosé wine is either made by the process of 'vinification en blanc', or that it is a mixture of rosé wines or that it is a mixture of red and rosé wines.

I conclude that the question referred by the Cour d'appel of Montpellier should be answered along the following lines:

'Article 43 (1) of Council Regulation No 337/79 permits the coupage of a red table wine with a rosé table wine and the sale of the resulting product originating in different Member States of the Community. Accordingly, it is not open to the Member States to prohibit the production or sale of such a product. It is contrary to Article 2 of Council Regulation No 355/79 to sell such a wine under the designations "vin rouge DPCE" or "vin rosé DPCE". The words used must be those specified in Article 2 (1)(d)(ii) of the Regulation.'

The costs of the parties to the main proceedings fall to be determined by the national court. The Commission and the Italian Government should bear their own costs.